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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16 CR 396 (GHW)

5 KEVIN LEWIS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 18, 2017
2:10 p.m.

10 Before:

11 HON. GREGORY H. WOODS,

12 District Judge

13
14 APPEARANCES

15 JOON H. KIM
16 Acting United States Attorney for the
Southern District of New York

17 AMANDA L. HOULE
Assistant United States Attorney

18 IRVING COHEN, ESQ.
19 Attorney for Defendant

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(In open court; case called)

MS. HOULE: Good afternoon, your Honor. Amanda Houle for government.

THE COURT: Thank you very much. Good afternoon.

MR. COHEN: Good afternoon, your Honor. Irving Cohen appearing for Mr. Lewis.

THE COURT: Thank you very much. Good afternoon.

we're here to conduct a sentencing hearing for Kevin Lewis. I have received and following materials with this sentencing: First, the presentence report which is dated September 20th, 2017; second, the defendant's sentencing memorandum dated October 2, 2017 together with its exhibits; third, the government's sentencing memorandum, which is dated October 16, 2017; and fourth, the defendant's supplemental sentencing letter, which is dated October 17th, 2017.

Have each of the parties received all of those materials?

MS. HOULE: Yes, your Honor.

MR. COHEN: Yes, your Honor.

THE COURT: Thank you.

Have the sentencing memoranda been filed with the Clerk of Court?

MS. HOULE: Yes, your Honor.

MR. COHEN: Yes, they have, your Honor.

THE COURT: Are there any other submissions in

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1 connection with this sentencing?

2 MS. HOULE: Nothing from the government.

3 MR. COHEN: None from the defendant.

4 THE COURT: Thank you.

5 Mr. Cohen, can I turn to you please. Have you read
6 the presentence report?

7 MR. COHEN: Of course.

8 THE COURT: Have you discussed it with your client?

9 MR. COHEN: Yes.

10 THE COURT: Mr. Lewis, have you read the presentence
11 report?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you discussed it with your counsel?

14 MR. COHEN: Yes, sir.

15 THE COURT: Have you had the opportunity to review
16 with your counsel any errors in the presentence report or any
17 other issues that should be addressed by the Court?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Ms. Houle, have you read the presentence
20 report?

21 MS. HOULE: Yes, your Honor.

22 THE COURT: To do you have any objections related to
23 the factual accuracy of the presentence report?

24 MS. HOULE: No, your Honor.

25 THE COURT: Mr. Cohen, do you have any objections

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1 related to the factual accuracy of the presentence report?

2 MR. COHEN: No, your Honor.

3 THE COURT: Thank you.

4 Given that there are no objections to the factual
5 recitations in the presentence report, the Court adopts the
6 factual recitations in the presentence report. The presentence
7 report will be made a part of the record in this matter and
8 will be placed under seal. If an appeal is taken, counsel on
9 appeal may have access to the sealed report without further
10 application to the Court.

11 Now, although district courts are no longer required
12 to follow the sentencing guidelines, we are still required to
13 consider the applicable guidelines in imposing sentence. To do
14 so it is necessary that we accurately calculate the sentencing
15 range. In this case Mr. Lewis has pled guilty to a lesser
16 included offense within Count One of the indictment in this
17 case. The defendant pleaded guilty to the offense of
18 conspiracy to distribute and to possess with intent to
19 distribute mixtures and substances containing a detectable
20 amount of cocaine base in violation of 21, U.S.C., 846.

21 Ms. Houle, does the government agree that a two-level
22 adjustment is appropriate here under Section 3D1.1(a)?

23 MS. HOULE: Yes, your Honor.

24 THE COURT: Thank you.

25 Is the United States moving for an additional

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1 one-level adjustment under Section 3E1.1(b)?

2 MS. HOULE: Yes, your Honor.

3 THE COURT: I calculate the sentencing guidelines in a
4 manner that is consistent with the plea agreement in the
5 presentence report. The applicable sentencing guidelines
6 manual is the November 1st, 2016 Sentencing Guidelines Manual.
7 The base offense level is determined pursuant Section 2D1.1.
8 Pursuant to 2D1.1(a)(5) and (c)(7) because the offense involved
9 at least 112 but less than 196 grams of cocaine base, the base
10 offense level is 26. Because a dangerous weapon was possessed
11 during the offense, two offense levels are added pursuant to
12 Section 2D1.1(b)(1). This yields an adjusted offense level of
13 28.

14 However, because the defendant was at least 18 years
15 old at the time of the instant offense, the instant offense is
16 a felony, that is, a controlled offense and the defendant has
17 two prior felony convictions of either a crime of violence or
18 controlled substance offense, specifically a May 2008
19 conviction for attempted robbery in the second degree, an
20 August 2015 conviction for attempted robbery in the third
21 degree as described in the presentence report. The defendant
22 is a career offender. Pursuant to Section 4B1.1(b), the base
23 offense level for this offense is 32 and because the statute
24 for maximum term of imprisonment is 20 years or more but less
25 than 25 years.

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1 Because the defendant has acceptance of responsibility
2 for his offense through his plea allocution, I apply a
3 two-level reduction pursuant to Section 3E1.1(a). Upon motion
4 by the government, an additional one-level reduction is
5 warranted under Section 3E1.1(b). As a result the applicable
6 guidelines offense level is 29. But the defendant has 13
7 criminal history points resulting from nine prior convictions
8 during the relevant time period and because Mr. Lewis's
9 criminal history is extensive, I will not resite each of his
10 convictions that yield criminal history points. Instead, I
11 adopt the description of Mr. Lewis's criminal history included
12 in pages 12 to 18 of the presentence report.

13 I will note a few things here. First, Mr. Lewis's
14 convictions span his entire adult life from a youthful
15 adjudication in 2001 to his August 2015 conviction for
16 attempted robbery. Second, while only nine of Mr. Lewis's
17 convictions yielded criminal history points, he was convicted
18 as an adult 15 times during that span in addition to his
19 juvenile adjudication. Third, I note that as stated in the
20 presentence report, the calculation of Mr. Lewis's criminal
21 history points calculated a maximum of four points under
22 Section 4A1.1(c). Both because the defendant has 13 criminal
23 history points and because he is a career offender under
24 Section 4B1.1(d), he is in criminal history category six.

25 I have considered whether there is an appropriate

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1 basis for departure from the advisory range within the
2 guidelines system. In this case, I concluded that it appears
3 there is a basis to depart pursuant to Section 5K2.23. In
4 particular, Mr. Lewis has been convicted for conduct that is
5 relevant conduct for purposes of this sentencing. In
6 particular Mr. Lewis was convicted on June 29, 2010 for two
7 separate offenses. The 2009 charged an attempted criminal sale
8 of a controlled substance in the third degree and a 2010 charge
9 of attempted criminal possession of a controlled substance.
10 According to the presentence report, Mr. Lewis served
11 concurrent terms for these offenses and was released on
12 July 14, 2013. I intend to sentence Mr. Lewis in a way that
13 takes into account those months of service for offenses that
14 constitute relevant conduct under 5K2.23.

15 Let me ask one question about his prior term of
16 service. Mr. Cohen, your submission states that Mr. Lewis
17 spent three and a half years in prison as a result of those
18 offenses. The PSR was not completely clear about the date of
19 incarceration.

20 What is your information?

21 MR. COHEN: Yes, your Honor. He received a five-year
22 sentence. There were two sentences that were running
23 concurrently, two separate charges. He pled guilty and
24 received a five-year total cumulative sentence and he served
25 three and a half years of that five-year sentence and then was

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1 released. It is called postrelease supervision in state court.

2 THE COURT: So 42 months; is that your information?

3 THE DEFENDANT: Yes, sir.

4 MR. COHEN: Yes, sir.

5 THE COURT: That is because he is incarcerated for
6 some period of time before his guilty plea?

7 MR. COHEN: Yes. I don't believe he made bail.

8 THE DEFENDANT: I made bail in '09. 2009 I made bail
9 in that case. That is how I got 2009 and 2010. I made bail.

10 MR. COHEN: He did make bail. So he got sentenced and
11 then he went in and started serving that sentence.

12 THE COURT: Thank you.

13 Why do you say then that he served three and a half
14 years?

15 MR. COHEN: Well, you are eligible under the Court
16 state system --

17 THE COURT: Let me focus you here. He was convicted
18 on July 29, 2010. He was released on July 14, 2013. So that
19 is two weeks more than three years, not three and a half years.
20 So many question is why do you say he served three and a half
21 years if he was not incarcerated prior to the date of his
22 conviction?

23 (Pause)

24 MR. COHEN: What I have been told, your Honor, and I
25 think it is correct is that on the first case he did about five

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1 days and was bailed out. Several months later he was arrested
2 on the second charge and then he stayed in. So that is where
3 the extra time comes in. He did another about four or five
4 months.

5 THE COURT: I understand. Thank you.

6 Is that information consistent with the government's
7 information, Ms. Houle, that the defendant served approximately
8 42 months in connection with the other offenses that constitute
9 relevant conduct?

10 MS. HOULE: Your Honor, I don't have any information
11 to contradict the representations by counsel. It does appear
12 from his rap sheet he was kept in from the January 5th, 2010
13 arrest.

14 THE COURT: Thank you.

15 MS. HOULE: Your Honor, if I may make one point
16 regarding guideline. Just for record in terms the convictions
17 that serve as the basis for career offender designation, your
18 Honor noted the August 19th, 2015 conviction as well as the
19 May 28th conviction and I just wanted to clarify that the
20 May 28th conviction, the year is 2002.

21 THE COURT: Thank you for that correction, Ms. Houle.

22 Now, apart from the departure that I just described
23 under Section 5K2.23, I don't find any other grounds that
24 warrant departure under the guidelines. In sum, I find that
25 the offense level is 29 and that the defendant's criminal

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1 history category is six. Therefore, the guidelines range in
2 this matter is 151 to 188 months of imprisonment. As I said,
3 however, believe a basis exist to depart from the guidelines
4 pursuant to is Section 5K2.23.

5 Does either party have any objections to the sentence
6 guideline calculation?

7 MR. COHEN: No, your Honor.

8 MS. HOULE: May I have one moment, your Honor?

9 THE COURT: Please take your time.

10 (Pause)

11 MS. HOULE: Your Honor, can I clarify the guideline
12 section for the departure by 5k2.--

13 THE COURT: 23.

14 MS. HOULE: I am sorry. I misheard.

15 THE COURT: That's fine.

16 MS. HOULE: Understood, your Honor, 5K2.23.

17 No objection, your Honor.

18 THE COURT: Mr. Cohen, do you wish to be heard with
19 respect to sentencing?

20 MR. COHEN: I do, your Honor.

21 THE COURT: Please proceed.

22 MR. COHEN: I will be fairly brief because obviously
23 we submitted two sentencing letters to your Honor to be
24 accepted as a memoranda. First thing I want to say I would
25 like to take a little responsibility. The government points

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1 out in their letter that it looks like Mr. Lewis is only
2 claiming that he sold a few times. That is not the case. He
3 has taken full responsibility. It did not come out right the
4 way he put it in his letter. I should have dealt with it
5 earlier. When I got the government's letter, I could not see
6 him because I got it Monday night or late Monday afternoon. I
7 attempted to see him this morning earlier, but he was not
8 produced in time. So I saw him for a few minutes here. He
9 confirmed pretty much that what I understood to be the
10 situation and that is that he takes full responsibility.

11 He is not suggesting that these were the only sales he
12 made obviously. He was trying to express two things. One was
13 that these sales denoted in this case to the undercover for
14 which he was charged were fairly small resulting in very small
15 profits so he was trying to point out how much he actually made
16 in these sales, which was fairly minor. Number two, he also
17 indicated and maybe it didn't come out clearly enough, he
18 didn't want to be held responsible for all the drugs that
19 everybody in this conspiracy was responsible for and all the
20 other drugs dealt by the other people in this case and so he
21 mentioned that. I don't think he realized early on that
22 technically you could be held responsible for not only what you
23 did but also what other people in the conspiracy you were aware
24 of were doing. So in the end he accepted responsibility for
25 between 112 and 196 grams and of course that is a lot more than

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1 the couple sales that were actually denoted to an undercover.

2 What also should be noted, and I think your Honor has
3 referred to this already, is that he served three and a half
4 years from a state court case that actually involved drugs that
5 were part of this conspiracy. Obviously he got out and he did
6 some more, but this goes back a long way. He was actually
7 severing that sentence and a later one during the latter time
8 periods of this conspiracy existence.

9 Now, the fact is that Mr. Lewis while he is serving
10 the sentence that he is presently serving in state court for
11 which he was taken to answer these charges and some of those
12 charges included the time he already did on the case three and
13 a half years, he took advantage of every single program that he
14 could while in state prison. He had no idea that this case was
15 coming down the line. He believed he was going to be released
16 within a year and a half, at the most two years, when he was
17 pulled from state prison and brought here in the summer of 2016
18 to answer these charges. He was looking forward to being
19 released back into society with a new outlook and new
20 opportunities. As you see from the documents that we provided,
21 there were programs that he took advantage of so that he could
22 prepare himself for a life in the future without anymore
23 criminal behavior. He knew that this was it and he can't
24 continue this way. He also had a child out there he was very
25 concerned about. Of course he was written in to face these

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1 charges and that really upset the apple cart as far as he was
2 concerned about getting back into society and conducting a
3 law-abiding life.

4 He continued while he was at the MCC in taking
5 advantage of whatever programs were available for him, not just
6 so he could show your Honor the certificates; but one of these
7 programs particularly that whose director has written to you,
8 your Honor, really demonstrates to you I hope that his
9 commitment to changing his life was serious. I would say this,
10 and I don't want to reiterate that I put in my submission, but
11 Mr. Lewis and I spent a lot of time together over the last
12 year, year and a half now and I have been doing this a pretty
13 long year, close to 50 years, and I really have been impressed
14 with everything that he says about what he wants to do and what
15 he has done. I know I am his lawyer but I am really convinced
16 that this is the end of the line for him. This is not the life
17 he wants to lead anymore.

18 The letters that were submitted with my memo I think
19 support the fact that he is really through. He has this
20 program that is behind him. It is an intriguing program
21 because it was started by ex-inmate who relates to the people
22 that are in the program. Hendrickson is his name.
23 Mr. Hendrickson doesn't accept everybody. He interviews and
24 determines this is a guy who I know is dedicated and who will
25 take advantage of the program we have. It is quite extensive

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1 with a different kinds of actions and activities to ensure that
2 there is a support system and there are resources that are
3 available.

4 So again I don't want to reiterate everything that I
5 put in this, but it seems to me, your Honor, that consistent
6 with his actual role here that he should get a sentence that is
7 even less than the 91 months that the Probation Department
8 recommends. Not too often do they recommend a nonguideline
9 sentence, but they do here. His criminal history as I have
10 indicated I think really overstates a few things, namely, his
11 involvement in this particular case. Your Honor has sentenced
12 quite a few people already. You know the case. I don't have
13 to go into it all. His actual involvement here would seem to
14 suggest a sentence that should be significantly less than the
15 91 months that the Probation Department recommends.

16 We will rest on those comments, your Honor.

17 THE COURT: Thank you.

18 Do you have any information regarding the
19 effectiveness of the Lead by Example reversing the trend? I
20 read the letters from Mr. Hendrickson. I see what the goals of
21 the program are. I have seen statements that it has been
22 effective.

23 Do you have anymore detail how effective it is?

24 MR. COHEN: I have no details on how people have done
25 in the program; but in my speaking to Mr. Hendrickson, he told

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1 me that it is working very well and he has had success with it.
2 I don't have any documental statistics, your Honor.

3 THE COURT: Thank you.

4 Let me turn to you, Mr. Lewis. Do you wish to make a
5 statement?

6 THE DEFENDANT: Yes.

7 THE COURT: Thank you. Please proceed however you
8 feel most comfortable.

9 THE DEFENDANT: Good afternoon, your Honor. I would
10 like to say that I take full responsibility of my actions as
11 far as the conspiracy. I apologize to my unidentified victims
12 in this case and my family and loved ones.

13 Before I came to custody from state prison, I made a
14 positive transition to do right and continue to achieve my
15 goals. I came down to the MCC stressed out, depressed and I
16 continue to progress, to move positive and think positive and
17 have good energy. When I got to Lead by Example,
18 Mr. Hendrickson was a big brother to me because I could relate
19 to his story and I seen how successful he was after doing his
20 own program and getting guys to stand in front of people and
21 talk.

22 My daughter is seven years old. She was born on
23 9-21-10. Since she was born, I have been a poor, poor father
24 meaning that I have been incarcerated three times and I was a
25 kid having a kid. Me being incarcerated is inadequate,

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1 worthless. I cannot help my family with bills, babysit,
2 nothing. I am going to get the opportunity to prepare for the
3 world and be a good husband to my wife, a good son to my
4 mother, and a wonderful father to my daughter. I want to get
5 the opportunity to change to do right. I don't have no more
6 room for negative energy or negative space in my life. I would
7 like to close this book of my chapter and move on.

8 That is all I can say, sir.

9 THE COURT: Thank you.

10 Ms. Houle, does the United States wish to be heard
11 with respect to sentencing?

12 MS. HOULE: Briefly, your Honor.

13 THE COURT: Thank you.

14 MS. HOULE: I address a few points that defense
15 counsel has raised. First, in connection with the description
16 of the defendant's participation in this conspiracy and the
17 extent of it, of course the defendant has served substantial
18 terms of incarceration within the charged time period of this
19 conspiracy, but he nonetheless was fully integrated in the
20 conspiracy's conduct. He was selling crack on daily basis in
21 the Lincoln, handing out crack to others to sell at a similar
22 frequency and furthermore at a great concern possessing a
23 firearm. The defendant has accepted responsibility for that
24 and that is consistent with the information from the
25 government's cooperating witnesses.

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1 The government does not agree with any assessment by
2 defense counsel that this defendant is less culpable than many
3 of the defendants that your Honor has sentenced to this point
4 despite his term of incarceration during the charged time
5 period. That is borne out by the weight of narcotics that he
6 has accepted responsibility for as part of his participation in
7 this conspiracy and under the plea agreement.

8 As well, your Honor, despite those substantial terms
9 of incarceration, the defendant returned to the very same
10 conduct that he had been previously incarcerated for with the
11 same people and in the same place selling the same drug, and
12 that is troubling. Defense counsel in his submission has
13 spoken extensively about the progress that Mr. Lewis has made
14 and indeed Mr. Lewis spoke very eloquently just now about that.
15 The government doesn't wish to undermine that or to discredit
16 it, but only to say that your Honor must consider that
17 information in the context of the defendant's history and his
18 extraordinary criminal history as compared to his codefendants
19 in this case.

20 Unless your Honor has any other questions, the
21 government will rest on its submission.

22 THE COURT: Thank you very much.

23 Is there any reason why sentence should not be imposed
24 at this time?

25 MS. HOULE: No, your Honor.

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1 MR. COHEN: No, your Honor.

2 THE COURT: I will now describe the sentence that I
3 intend to impose but counsel will have the final opportunity to
4 make legal objections before the sentence is finally imposed.

5 As I stated the guidelines range applicable to this
6 case is 151 to 188 months of imprisonment. I considered the
7 guidelines range. Under the Supreme Court's decision in *Booker*
8 and its progeny, the guidelines range is only one factor that I
9 must consider in deciding the appropriate sentence. I am also
10 required to consider the other factors set forth in 18, U.S.C.,
11 Section 3533(a). These include first the nature and
12 circumstances of the offense and the history and
13 characteristics of the defendant. Second, the need for the
14 sentence imposed to, A, reflect the seriousness of the offense,
15 to promote respect for the law and to provide just punishment
16 for the offense, B, to afford adequate deterrence to criminal
17 conduct, C, to protect the public from further crimes of the
18 defendant, and D, provide the defendant with needed education
19 or vocational training, medical care, or other correctional
20 treatment in the most effective manner. Third, the kinds of
21 sentences available. Fourth, the guideline range. Fifth, any
22 pertinent policy statements. Six, the need to avoid
23 unwarranted sentencing disparities among defendants among
24 defendants with similar records who have been found guilty of
25 similar conduct. Seventh, the need to provide restitution to

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1 to any victims of the offense. Ultimately, I am required to
2 impose a sentence that is sufficient but no greater than
3 necessary to comply with the purposes of sentencing that I
4 mentioned a moment ago.

5 Now, I have given substantial thought and attention to
6 the appropriate sentence for Mr. Lewis in this case. I have
7 considered all of the Section 3553(a) factors and the purposes
8 of sentencing as reflected in the statute. Based on a review
9 of all of the those factors, which I going to discuss in much
10 more detail in a moment, I intend to impose a nonguideline
11 sentence of 109 months to be followed by three years of
12 supervised release subject to the mandatory and special
13 conditions described in the presentence report which I will
14 detail with more specificity later.

15 I do not expect to impose a fine. I impose a
16 mandatory fee of \$100.

17 Let me start with the nature the offense. This is a
18 very serious offense. Mr. Lewis was a part of the conspiracy
19 to sell crack cocaine. The conspiracy scale and its impact
20 were significant. Mr. Lewis and his coconspirators engaged in
21 conduct that injured not only the users of these narcotics that
22 they sold but the entire community. The conspiracy involved
23 the sale of drugs and public places at all times of the day and
24 night even when surrounded by children.

25 The conspiracy used violence to protect the

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1 organization, violence which again impacted not only the direct
2 victims but also threatened the community in the Lincoln
3 Houses. Mr. Lewis was personally responsible for the
4 distribution of a meaningful quantity of narcotics. As Mr.
5 Cohen emphasized he is not being held responsible for sale of
6 all of the drugs sold in the conspiracy, but only the amount
7 for which he has accepted responsibility but even that quantity
8 is significant. I also emphasize that Mr. Lewis possessed a
9 firearm in connection with this conspiracy which is of great
10 concern to me.

11 Mr. Lewis is now 31 years old. He is no longer a
12 young man. He was not a young man in 2015. He was born in
13 November 1985. I recognize that Mr. Lewis had a very difficult
14 childhood and I understand the impact that that has on the
15 choices that Mr. Lewis had in his life. He experienced the
16 trauma of losing a brother in an accident when he was very
17 young.

18 His father left the family when Mr. Lewis was 13 years
19 old and Mr. Lewis moved frequently, living in a very small
20 apartment with all of his several siblings. I understand that
21 Mr. Lewis's mother did her best to provide for all of the
22 children but she struggled. Ultimately Mr. Lewis spent three
23 years in foster care where what was surely a traumatic
24 experience. He was abused by some of the people entrusted with
25 his care and left without alternatives, and Mr. Lewis fell prey

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1 to the "lurer" of the streets and joined a set of the Bloods
2 gang at age 14.

3 Mr. Lewis has a young daughter, fruit of the flower of
4 a prior relationship and Mr. Lewis's daughter and her mother
5 have both written me about Mr. Lewis's efforts to remain in
6 contact with her during his period of incarceration and of his
7 importance in the life of his daughter which Mr. Lewis has
8 emphasized here. I know that Mr. Lewis is now in a
9 relationship with Ms. Watts who has also written me. Mr. Lewis
10 has explained during his interview the inspiration that
11 Ms. Watts provides for him to change his direction in life. I
12 accept and applaud his desire to change his life so that he can
13 be more present in the life of his daughter.

14 I accept the positive comments that he has made today,
15 but unfortunately I have to take that in context. As I have
16 already described generally, Mr. Lewis has had a long criminal
17 history. His criminal history extends throughout his adult
18 life. The convictions include drug trafficking crimes, two
19 relevant conduct offenses, robberies, attempted robberies,
20 criminal trespass, resisting arrest, and mischief among others.
21 I want to highlight in particular Mr. Lewis's August 2015
22 conviction for aggravated criminal contempt. According to the
23 PSR, the police report for that offense states that the
24 defendant pulled the hair of the victim, slammed her head
25 against a gate, and then put both hands around her neck to

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1 impede normal breathing. This is an account of violence. I
2 noted a number of arrests in the PSR which were not pursued
3 because of Mr. Lewis's conviction on unrelated offenses.

4 I highlight these offenses because they give me
5 concern regarding the risk that Mr. Lewis may present to the
6 community. I say this with some real pain because I heard Mr.
7 Lewis speak to me very eloquently about his desire to change
8 and I accept that. Against that as I said I have to balance
9 the fact of his long criminal history. And the fact that Mr.
10 Lewis became a member of the street gang years before his first
11 arrest, I fundamentally have to be troubled by and am troubled
12 by the fact that Mr. Lewis has returned to committing crimes
13 despite each of those prior convictions even the convictions
14 for selling crack. Those facts leave me very concerned about
15 Mr. Lewis's respect for the law and his ability to comply with
16 it.

17 Now, I have read the letters from "Lead by Example/
18 Reverse the Trend" and the other materials provided by the
19 defendant and I recognize again that it can be difficult for a
20 person in Mr. Lewis's situation, somebody who is already
21 incarcerated, to demonstrate their rehabilitation. I applaud
22 the efforts that Mr. Lewis has made during the recent term of
23 incarceration for preparing himself for a law-abiding life.
24 Still I have to weigh those efforts against Mr. Lewis's
25 persistent criminal activity during the periods of time that he

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1 has not been incarcerated.

2 Mr. Lewis was unable to complete unfortunately even
3 his first year of high school as a result of his state
4 conviction. He has a very limited job history. He provided
5 information about only two employers, an off-the-book job and
6 one while he was a juvenile. Mr. Lewis is in generally good
7 physical health but is treated for hypertension and enlarged
8 heart. He has issue with depressive disorder and anxiety
9 disorder and he has had some significant issues with drug use.
10 I should say particularly with marijuana, which he smoked since
11 he was 12. He also experimented with Extacy. Mr. Lewis
12 successfully completed a drug treatment program at Exodus, but
13 I understood that he returned to smoking marijuana after
14 completing that program because the PSR said he smoked it daily
15 through his arrest in 2014.

16 I believe a meaningful sentence is to be imposed in
17 this case to promote respect for the law and to impose a just
18 punishment. I am required to consider a couple things. First,
19 to consider the deterrent effect on Mr. Lewis personally and
20 the need to deter others from committing this crime. Now, with
21 respect to personal deterrence, I again recognize Mr. Lewis's
22 commitment to turn his life around, but I am still concerned
23 about the possibility that Mr. Lewis will be tempted to
24 recidivate. Let me explain some of the reasons why I have that
25 concern.

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1 I start with his early membership in a street gang at
2 age 14. He has a number of prior state convictions, including
3 two prior state drug offenses and two attempted robberies. He
4 returned to crime again and again despite those prior
5 convictions. As the government summarized in its letter to me,
6 Mr. Lewis has repeatedly demonstrated his inability to comply
7 with or perhaps lack of concern about the law. The government
8 writes that that has manifested itself "in every conceivable
9 way from repeated violations of parole, to violations of
10 protective orders, to carrying narcotics into prison
11 facilities, to lying to law enforcement, to resisting arrest,
12 to ignoring court orders of appearance, to returning to
13 criminal conduct again and again after serving terms of
14 imprisonment." Added to this unfortunately is the difficulty
15 of his present circumstances, namely, even with the motivation
16 of his daughter and his concurrent relationship with Ms. Watts,
17 his broader lack of family support, education, and the
18 legitimate job experience all of this increases my concern that
19 Mr. Lewis will reactivate. I should say increases my concern
20 but it doesn't mean it is a certainty. I very much hope that
21 Mr. Lewis will be able to embrace a life that will allow him to
22 be in his daughter's life and to support his mother and
23 partner.

24 Because Mr. Lewis had a weapon in connection with this
25 offense and because of some of the violent nature of his

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1 conduct that was described that underlies 2015 conviction that
2 I described earlier, I am particularly concerned about
3 potential risk to the public in the event that he does
4 ultimately recidivate. I must also consider the goal of
5 general deterrence and by imposing a meaningful sentence, I
6 hope that it will be effective to dissuade others from engaging
7 in similar conduct. Mr. Lewis will be able to use the period
8 of incarceration for educational and vocational training,
9 medical care or other correctional treatment.

10 Mr. Lewis has a few needs in particular, which I hope
11 can be addressed. First, Mr. Lewis needs drug treatment to
12 help him stop using marijuana and potentially other drugs.
13 Second, I hope that Mr. Lewis will take advantage of the
14 opportunities that are available to him to advance his
15 education and to learn the job skills that he will need to have
16 to succeed when he is released. In particular, I hope that Mr.
17 Lewis will continue his work that he began at Green and now has
18 continued at MCC to obtain his GED. These are basic life
19 skills that Mr. Lewis wants to develop the life that he has
20 described that he needs to obtain and I hope that he will take
21 advantage of this time to do so.

22 I have considered the kinds of sentences available.
23 In this case I believe that a sentence involving a meaningful
24 term of incarceration is appropriate. I have given serious
25 consideration to the guidelines and policy statements. In this

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1 this case my sentence reflects a downward departure and that
2 gives effect to the 42 months that Mr. Lewis spent incarcerated
3 for crimes that constitute the relevant conduct for this
4 offense. I have considered the need to avoid unwarranted
5 sentencing disparities.

6 On balance, given Mr. Lewis's circumstances I believe
7 the sentence is appropriate for him. First, I would like to
8 make a few comments. Noting that Mr. Lewis is a career
9 offender has much more significant criminal history than any of
10 the other defendants who I have sentenced in this case. While
11 the amount of cocaine base for which he has accepted
12 responsibility here is lower than that of some of his
13 codefendants, his criminal history and his career offender
14 status together with the fact that he had a firearm in
15 connection with this offense in my view justified a
16 significantly greater than those codefendants. And one the
17 principal things I need to look at in evaluating the
18 appropriate sentence is the characteristics of the defendant,
19 in this case the defendant's prior criminal history weighs
20 heavily in my considerations.

21 As I say this is particularly true given my view given
22 the fact that Mr. Lewis had a firearm during the course of this
23 offense, which gives me concern about risk to the public, and
24 given the nature of certain of the offenses that are the
25 conduct that led to his prior convictions and I described one

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1 of the crimes for which he accepted responsibility in 2015,
2 which according to the police report's description involved
3 some amount of violence.

4 So with that, Mr. Lewis, please rise for the
5 imposition of sentence.

6 Mr. Lewis, it is the judgment of this Court that you
7 be sentenced to 109 months of imprisonment. This term of
8 incarceration shall be served concurrently with the
9 undischarged portions of Mr. Lewis's state offenses in the
10 mattered No. 010202015 and 02149-2015 in New York County and
11 Bronx County respectively. I believe that a concurrent
12 sentence for this and the state offenses provides reasonable
13 punishment for this offense. Mr. Lewis, following your term of
14 imprisonment, I am sentencing you to a term of three years of
15 supervised release which is within the guidelines range. The
16 mandatory conditions of supervised release shall apply. They
17 are: The defendant shall not commit another federal, state or
18 local crime; the defendant shall not unlawfully possess a
19 controlled substance; the defendant shall refrain from any
20 unlawful use of a controlled substance.

21 The mandatory drug testing condition is suspended due
22 to the imposition of a special condition requiring drug
23 treatment and testing. The defendant shall cooperate from the
24 collection of DNA as directed by the Probation officer. The
25 standard conditions of supervised release 1 through 13 shall

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1 apply.

2 In addition, the following special conditions shall
3 apply: The defendant shall submit his person, residence, place
4 of business, vehicle, and any property or electronic devices
5 under his control to a search on the basis that the Probation
6 officer has reasonable suspicion that contraband or evidence of
7 a violation of the conditions of the defendant's supervised
8 release may be found. The search must be conducted at a
9 reasonable time and in a reasonable manner. Failure to submit
10 to a search may be grounds for revocation. The defendant shall
11 inform any other residence that the premises may be subject to
12 search pursuant to this condition.

13 The defendant shall participate in an outpatient
14 treatment program approved by the United States Probation
15 Office, which program may include testing to determine whether
16 he has reverted to using drugs or alcohol. The defendant shall
17 contribute to the cost of services rendered based on his
18 ability to pay and the availability of third-party payments.
19 The Court authorizes the release of drug treatment evaluations
20 and reports, including the presentence investigation report
21 that the substance abuse treatment provider. The defendant
22 shall be supervised in his district of residence.

23 There will be no fine because the Probation Department
24 reports that you are unable to pay one, Mr. Lewis. The
25 defendant must pay to the United States a total special

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1 assessment of \$100.

2 Ms. Houle, I understand the government is not seeking
3 forfeiture or restitution in this matter; is that correct?

4 MS. HOULE: That's correct.

5 THE COURT: Does counsel know of any legal reason why
6 this sentence shall not be imposed as stated?

7 MS. HOULE: No, your Honor.

8 MR. COHEN: No legal reason.

9 THE COURT: The sentence as stated is imposed. I find
10 the sentence to be sufficient but not greater than necessary to
11 comply with the purposes of sentencing set forth in 18, U.S.C.,
12 Section 3553(a)(2).

13 You can be seated, Mr. Lewis.

14 Mr. Lewis, you have the right to appeal your
15 conviction and sentence except to whatever extent you may have
16 validly waived that right as part of your plea agreement. The
17 notice of appeal must be filed within 14 days of the judgment
18 of conviction. If you are not able to pay the cost of an
19 appeal, you may apply for leave to appeal in forma pauperis.
20 If request the Clerk of Court will prepare and file a notice of
21 appeal on your behalf.

22 Are there any other applications?

23 MR. COHEN: Obviously pursuant to the plea agreement
24 and since your Honor has sentenced Mr. Lewis to a nonguideline
25 sentence that is lower, there is no basis for an appeal. No

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1 appeal will be filed, your Honor.

2 THE COURT: Thank you. Do you have any other
3 applications?

4 MR. COHEN: The other application, your Honor, if you
5 could recommend to the Bureau of Prisons that Mr. Lewis serve
6 his sentence in the New York area either Fort Dix or Danbury,
7 that will be greatly appreciated. So his family and especially
8 his daughter can visit.

9 THE COURT: I am be happy to do that. The BOP is
10 authorized to completely ignore my recommendation, but I will
11 put that in the judgment. Thank you.

12 MR. COHEN: So it is clear to me, your Honor, which I
13 think it is, the sentence that you imposed already considers
14 the 42 months that he served in connection with the relevant
15 conduct?

16 THE COURT: Yes. It is 42 months less than the
17 otherwise bottom of the guideline range.

18 MR. COHEN: Very well, your Honor.

19 THE COURT: Thank you.

20 MS. HOULE: Your Honor, may I have one moment with
21 defense counsel?

22 THE COURT: Please.

23 (Pause)

24 MS. HOULE: Your Honor, if I may note for the record,
25 and I don't recall if defense counsel said this in his remarks,

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1 but defense counsel was given the opportunity to meet with the
2 defendant in advance of sentencing regarding the government's
3 letter that was filed on Monday.

4 THE COURT: Thank you. I heard that in his comments.

5 MS. HOULE: No other applications from the government,
6 your Honor.

7 THE COURT: Thank you.

8 Let me take one moment, Mr. Lewis. You don't need to
9 stand. I just wanted to say when you spoke to me now as
10 Ms. Houle just said, you were incredibly eloquent. I believe
11 you. I believe that you want to develop a life so that you can
12 be present in the life of your daughter. I believe you. I
13 think that you can do it.

14 As I am sentencing you, I have to look at the whole
15 bundle of everything that has happened in your life. And as I
16 tried to say earlier, it is difficult for me because I see a
17 snapshot of what you did while you're incarcerated and I don't
18 want you to take from this that I think anything but that you
19 are truly committed to turning your life around and nor that
20 you cannot do it. I think that you can do it. I have to
21 recognize that it is going to be a lot of work for you to do it
22 and the difficulties that you are going to have as you are
23 doing that. I think you can do it.

24 In some ways I want to say I am sorry that you cannot
25 see deeply into your heart as I am doing this, but that doesn't

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1 mean that I think that anything other than you can achieve the
2 goal that you told me you are going to achieve and how much I
3 hope that you can do that and be a presence in your daughter's
4 life. So I don't disbelieve you. I know that you can do this
5 and I hope you don't think you can do anything but achieve your
6 goals. I wish you the best of luck. Thank you.

7 This proceeding is adjourned.

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